HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

Writ Petition NO. 288 OF 2006

PETITIONER

A.W. Khan
Aged about 43 years
S/o Late Mr. Abdul Hamid Khan
Vansewak
Division Forest
Working Plan-Division, Durg (C.G.)
R/o. House No. 134/39, Near Majar
Kelabadi, Durg (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh
Through Principal Secretary
Forest Department Govt. of C.G.
D.K.S. Bhawan Mantralaya,
Raipur (C.G.)

2. State of Madhya Pradesh
Through Secretary
Forest Department Govt. of M.P.
Vallabh Bhawan, Bhopal (M.P.)

3. Samajik Vaniki Prashikshan Sanstha
(Forest School)
Shivpuri (M.P.)
Through Conservator of Forest
Shivpuri (M.P.)

Present: Mr. V.G. Tamaskar, learned counsel for the petitioner.
Mr. Utkarsh Verma, learned Dy. Govt. Adv. for the State./ respondent No.1.

ORAL ORDER
(Passed on 25th January 2006)

The following oral order of the Court was passed by

S.R. NAYAK, CJ :

The grievance of the petitioner is that since he has secured second position in the training of Samajik Vanikee Prashikshan Sansthan Shivpuri (Madhya Pradesh) in the sixth batch, he ought to have been appointed as Assistant Forest Extension Officer (Sahayak Vanvistar Adhikari) in the pay-scale of Rs.975 – 1650, the then existing scale in terms of the administrative instructions issued by the State Government of Madhya Pradesh. The above claim of the petitioner was rejected by the department and when that action was assailed before the State Administrative Tribunal, the Tribunal too refused the relief to the petitioner. Hence, this petition under Articles 226/227 of the Constitution of India.

(2) We have heard learned counsel for the parties. Shri V.G. Tamaskar, learned counsel for the petitioner would contend that since the petitioner has secured 74.20% marks in sixth batch training and secured second rank among the toppers, he ought to have been appointed as Assistant Forest Extension Officer on par with the treatment meted out to Shri Prakash Chand Tripathi who had secured only 74.37% marks in sixth batch who is appointed as Assistant Forest Extension Officer. It was further contended that one Shri Vanshpati Mishra though secured second rank among the toppers and secured less than 75% marks in some other batch was appointed as Assistant Forest Extension Officer and the action of the department not to extend similar treatment to the petitioner would tantamount to an invidious discrimination violating Article 14 postulates. Learned Govt. Advocate, *per contra*, would support the impugned action in denying the appointment to the petitioner to the post of Assistant Forest Extension

Officer and would point out that the arguments advanced on behalf of the petitioner are based on misconceived facts.

(3) Having heard learned counsel for the parties, we do not find any merit in the contention advanced by Shri V.G. Tamaskar, learned counsel for the petitioner.

(4) The administrative instructions issued by the Government from time to time providing for deputation of the toppers in the training to undergo training for the post of Assistant Forest Extension Officer have been referred to by the State Administrative Tribunal in para 6 of the order dated 01.09.1998 made in O.A. No. 135/1989, which reads as follows:

> "In reply, it has been submitted for the respondents that the department concerned considered that those candidates who are the toppers in the training of Van Sewak should be sent for the training of Assistant Forest Extension Officer because it was considered as a reward for ensuring better performance in the training. Therefore, those who topped the list no percentage of marks obtained by them was prescribed. Proposal for giving the said advantage to the toppers in the list is Annexure R/II. The said proposal was approved by the government. The said reward was not being regulated by any statutory rule. Thereafter, it was considered that those candidates who stand second but secured 75 per cent of marks in total and must have secured minimum 66 per cent in each subject be also given the same reward. The said proposal was accepted by the Government. Thereafter, the names of those candidates who stood second, but could not obtain 75 per cent of marks in total or 66 per cent of marks in each subject were sent to the State Government for granting the same reward to them

as was being granted to the toppers of the said examination. However, the State Government did not agree with the said proposal which was turned down."

The correctness of the observations made by the Tribunal in para 6 is not disputed before us. As per the administrative instructions, if the second topper in the merit list secures 75% or more marks in total and minimum of 66% marks in each subject, he can be appointed to the post of Assistant Forest Extension Officer and not otherwise. There is no controversy between the parties that the petitioner secured only 74.20 % marks in the sixth batch examination in aggregate. Therefore, in terms of the administrative instruction issued by the Government, he would not be entitled to appointment to the post of Assistant Forest Extension Officer. But, Shri V.G. Tamaskar, learned counsel for the petitioner would not rest at that. He would contend that the denial of appointment to the petitioner for the post of Assistant Forest Extension Officer tantamounts to invidious discrimination, because, Shri Prakash Chand Tripathi and Shri Vanshpati Mishra, similarly circumstanced, were appointed to the post of Assistant Forest Extension Officer. This argument is built upon misconceived facts. It needs to be noticed that in the case of Shri Prakash Chand Tripathi, he was the topper (1st Rank holder) and he had secured 74.37% of marks, therefore, in terms of the administrative instructions then prevailing, he was rightly appointed to the post of Assistant Forest Extension Officer. As regards Shri Vanshpati Mishra, as could be seen from Annexure P/8, he was also the topper (1st Rank holder) and, therefore, in terms of the administrative instructions he was also entitled to be appointed to the post of Assistant Forest Extension Officer. Be that as it may, even assuming that the

department appointed an ineligible person to the post of Assistant Forest Extension Officer, that circumstance itself could not be a justification for the Court to issue mandamus to appoint another ineligible person to the post of Assistant Forest Extension Officer. Mandamus shall never go to any authority to do something in breach of law or binding administrative instructions. The writ petition is devoid of merit and it is accordingly dismissed. No costs.

Sd/-
The Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge